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## See, Judge, Act: Restorative Justice and Catholic Social Teaching's Impact on American Incarceration

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Professor Ryan

Montserrat: Exploring Differences

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## See, Judge, Act: Restorative Justice and Catholic Social Teaching's Impact on American Incarceration

Nelson Mandela once argued that one can tell a great deal about a nation not by how it treats its wealthiest and most powerful citizens, but rather those in its prisons. The United States has fallen short on its promise of guaranteeing a just execution of the rule of law, violating a fundamental principle to the American legal structure. Over the last fifty years, the U.S. has embarked on a reckless and regressive form of policing and social control that has become colloquially known as mass incarceration. One glaringly obvious feature of American incarceration is the disproportionately high number of African Americans who find themselves behind bars. Using the Catholic Social Teaching principles of "See, Judge, Act", we as a nation can conceptualize the problem and begin to rectify the current abuse that we see in sentencing in the United States today. Then, we can work toward a system of restorative justice based around ideas of Human Dignity, Rights and Responsibilities, and Concern for the Poor.

Currently, in the United States, we imprison a larger percentage of our black population than South Africa did at the height of the Apartheid era (Alexander, 6). As compared to a similarly industrialized Western democracy such as Germany, we have a prison rate of seven hundred and fifty people for every one-hundred-thousand citizens, while Germany stands at a mere ninety-three per one-hundred thousand (Alexander, 6). Surely such a comparison is not something of which to be proud, but one could argue that this problem could be the result of several inherent differences among the two nations. However, this does not appear to be the case

as evidenced by the racial breakdown in American prisons. As Pew Research points out, in 2017 African Americans made up twelve percent of the entire adult population yet they made up thirty-three percent of the entire prison population. Furthermore, Hispanics make up sixteen percent of the adult population, but their incarceration rate is twenty-three percent (Gramlich). Moreover, the U.S. is home to a mere five percent of the world's entire population, yet one could find a staggering twenty-five percent of the world's prisoners housed in its prisons (Gramlich). One would find it difficult to find many American citizens who continue to support the current trend of incarceration and excessive sentencing that is plaguing our nation. Statistics are helpful insofar as they are the best way in which to understand the magnitude of an issue that constitutes the "See" aspect of Catholic Social Teaching. However, data does not shed light on the pervasive structural inequities that must be altered if we wish for a more equitable system of justice.

Often when nations find themselves entrenched in a social issue of great magnitude, there is usually one main contributor upon which at least some of the blame may be laid and can help explain how the problem was able to unfold to such a degree. In the case of mass incarceration, the United States government's decision to initiate a systematic "War on Drugs" can explain in large part where we find ourselves today. The War on Drugs was a series of rules, regulations, statutes, and even Congressional acts to vastly limit the production, distribution, and consumption of drugs in the United States. Like the twentieth century's alcohol prohibition, the United States government saw the opportunity to crack down on drugs as a "cure for myriad social ills" (Coyne). As a result of the formal drug war, local, state, and federal efforts were proliferated to tackle the problem of drugs on American streets and in their homes once and for all. With President Nixon calling drugs "public enemy number one", in 1970 the United States

Congress passed the Comprehensive Drug Abuse Prevention and Control Act (CDAPC). The CDAPC was, at its most basic level, consolidation of numerous federal laws and regulations under one unifying law, establishing the “schedule” of drugs (among a vast number of other changes) with which we are familiar today. To make matters worse, just two years after the CDAPC was passed, the Drug Enforcement Administration began its operations which quickly expanded its “scale and scope” to punish an ever-increasing number of drug offenders (Coyne).

Perhaps we might not be in the current situation we are in had the War on Drugs been largely limited to the Nixon Administration. Rather, history shows that this was only the beginning of a long and dark road toward the incarceration of more of our nation’s citizens. During the Regan administration, First Lady Nancy Reagan began her infamous anti-drug campaign “Just Say No”, providing evidence of the height to which anti-drug rhetoric had seeped into the American media in the 1980s. Such rhetoric started in the White House and made its way down into average Americans’ lives. However, the public’s perception of the drug “problem” did not align with that of the federal government in the slightest. For example, a 1985 poll of Americans revealed that only a mere 2-6 percent of the public felt that drugs were the nation’s number one problem (Drug Policy). President Reagan and federal agencies capitalized on the “political hysteria about drugs leading to the passage of draconian penalties in Congress and state legislatures that rapidly increased prison populations” (Drug Policy). In just over fifteen years since Reagan’s inauguration, the number of individuals arrested for nonviolent drug convictions increased from 50,000 to over 400,000 in 1997 (Drug Policy). History shows us how greatly we erred in believing the notion that the best way to address drug distribution and use was to incarcerate rather than restore and rehabilitate. However, current incarceration rates of

African Americans (and more broadly the entire adult population) begs the question of how we as a nation can focus on the imprisonment for violent crime offenders and leave restorative justice programs for the reentry of nonviolent criminals back into mainstream society and out of the margins. One way in which we can achieve such a future is through the adoption of restorative justice programs.

Catholic Social Teaching principles define restorative justice as the “approach to achieving justice that involves, to the extent possible, those who have a stake in a specific offense or harm to collectively identify and address harms, needs, and obligations to heal and put things as right as possible” (Sharpe). Traditional American legal systems today practice what is known as retributive justice. That is, justice is based on offenders being exclusively punished for their actions rather than on coming to an understanding of why the crime was committed in the first place and subsequent rehabilitation to give the individual a much better chance of living a meaningful and successful life after being released. Thirty-five states from Vermont to Colorado have adopted and developed legislation encouraging law enforcement to use restorative justice techniques, but many local law enforcement departments “have relied on local nonprofits to perform the sessions without an official blessing from the state” (Beitsch). Such reluctance of law enforcement is evidence that more needs to be done to illustrate the effectiveness of restorative justice programs.

Restorative justice put simply, is just one alternative to prison, but a fuller and more complete integration of restorative justice into the American justice system could transform how we hold individuals accountable for committing crimes. Just four years ago, West Virginia took a step to set aside funding for restorative justice and other alternatives to jail sentences in the

juvenile prison population. Furthermore, in Wyoming and Minnesota, parole boards in each state facilitate what has become known as “victim-offender-dialogues” which allows for face to face conversation a reality between offender and victim which, in many cases, has yielded real healing (Beitsch). Traditionally, as an article from the Baltimore Sun points out, “the only contact between victim and offender occurs at sentencing, when the victim describes to a judge, not the offender, the impact of the crime. There is hope as we move into a new decade for sentencing in the United States as Maryland’s Governor Larry Hogan signed into law with bipartisan agreement the Maryland Justice Reinvestment Act which is designed to reduce Maryland’s prison population and fund various programs to help reduce the recidivism rates currently seen in the state. Lawmakers in Maryland of both parties are continually focused on evaluating and updating the “policies that failed in the 1980s and 1990s (Murphy).

The principles of restorative justice have been shown to work in states across our nation, but there must be guiding principles to shape a vision of the desired outcome. Catholic Social Teaching (CST) along with ideas articulated in civil rights advocate and author Michelle Alexander’s famous book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* provides a solid foundation out of which a path forward can be carved. In her book, Alexander claims that our reckless practices of incarceration of African Americans and the consequent stripping of rights and privileges from nonviolent offenders is accomplishing much of the same ends that were characteristic of Jim Crow Era legal disenfranchisement and restrictions just without having overtly racist laws on the books. Alexander is touching on one very salient point in that today “a criminal freed from prison has scarcely more rights, and arguably less respect than a freed slave or a black person living “free” in Mississippi at the

height of Jim Crow” (Alexander, 141). She goes on to say that criminals sadly remain “the one social group in America we have permission to hate” (Alexander, 141). On top of the inevitable feeling of shame that many ex-criminals face when they are released back into society is the stripping away of social services that many other Americans are afforded simply because they have not been arrested for a petty drug possession crime or other nonviolent offense. Alexander lays out just some of these restrictions that criminals face. She writes

“he (or she) may be ineligible for many federally-funded health and welfare benefits, food stamps, public housing, and federal educational assistance. His driver’s license may be automatically suspended, and he may no longer qualify for certain employment and professional licenses” (Alexander, 143).

Yet, we as a nation seem to wonder why we have such high incarceration rates and our prisons are filling up, but if one were to look at it logically, we leave nonviolent criminals with such bleak prospects for the future which leads to the disproportionately high recidivism rates. An article by Bruce Western and Becky Pettit titled “Incarceration and Social Inequality” notes that incarceration has particularly devastating effects of individuals in their late twenties and early thirties as these are “key years in the life course when most men are establishing a pathway through adulthood by leaving school, getting a job, and starting a family” (Western, 9).

However, through a more compassionate sentencing system and while bearing in mind some key CST concepts, the tide could begin to shift towards criminals only being locked up once, if at all.

The concepts of Human Dignity, Rights and Responsibilities, and Concern for the Poor are so closely woven into the issue of mass incarceration that one would find it difficult to miss

the connection. First and foremost, all humans on earth deserve to be treated with respect and dignity simply by being human. Humans share an intrinsic worth that does not diminish as a result of a crime. Often, it is easier to dismiss and marginalize convicted criminals on the notion that society would function better without them corrupting our social institutions. However, no one person has a single facet that defines who they are and the talents and virtues they bring to society. Put simply, criminals are not simply just criminals. Often adult offenders leave behind a family and children who depend on them. Thus, an excessive sentence for selling drugs to feed one's family is counterproductive and immoral.

Secondly is the idea of rights coming with responsibilities. I must note that I am not arguing that those who do break the law should not be held accountable. However, there is the point to be made that we seem to have lost the idea of a punishment being proportionate to the severity of the crime. While one does not have the "right" per se to sell illegal drugs, one does have the ability to choose whether to engage in such behavior. In terms of taking responsibility for a crime such as drug possession, restorative justice programs have repeatedly shown to be more effective as offenders would prefer to perform community service or another form of restorative justice rather than serve a prison sentence, especially if that sentence is a mandatory minimum of ten years in prison for drug possession (Doyle).

The last and perhaps most important CST principle that we must keep in mind is Concern for the Poor. Sentencing for low-income individuals is often worse than that for the upper-middle class and the wealthy as a direct result of the lack of funds to hire a qualified attorney to represent the person in court. Alexander points out this glaring inequity in *The New Jim Crow* stating that in Wisconsin upwards of 11,000 people each year are sentenced and put in



prison without representation in court because “anyone who makes more than \$3,000 a year is considered able to afford a lawyer” (Alexander, 85). To add just one more example, in Virginia, fees paid to court-appointed counsels are capped at a mere \$428 for cases carrying a sentence of fewer than twenty years (Alexander, 85). Such laws create an extraordinarily strong incentive for lawyers to not represent a criminal if the payout is just over \$400 even though these types of cases are exactly the type for which the poor people in our country would benefit immeasurably from counsel in the courtroom. To add insult to injury, it is overwhelmingly poorer Americans in the inner cities relying on drug transactions as a means of income rather than the well-off individuals in the nation’s wealthy suburbs.

Drug sentencing in the United States remains a social issue that most reasonable people can agree that something must be done to address the outdated sentencing policies of the War on Drugs. While legislatures are working to reverse some of these policies, a new and reinvented form of justice, one that is restorative rather than retributive, needs to be allowed to proliferate in the U.S. in the coming decades. The problem of overcrowded jails and excessive sentencing is not going to be solved overnight, but if politicians and lawmakers can empathize with what it means to be a criminal today and the negative implications that accompany that stigma, then perhaps CST can help us ensure that we do not perpetuate another era of Jim Crow-esque policies in a modern progressive America.

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